

Master Contract Number T04-MST-001

for

Toll-Free Calling and Support Services

between

The Department of Information Services

and

X5 Solutions

Effective Date: November 25, 2003

Table of Contents

1.	Definition of Terms	1
----	---------------------------	---

Contract Term

2.	Term	3
3.	Survivorship	4

Pricing, Invoice And Payment

4.	Pricing	4
5.	Advance Payment Prohibited	4
6.	Taxes	4
7.	Invoice and Payment	5
8.	Services Management Reporting	6
9.	Overpayments to Contractor	7

Contractor's Responsibilities

10.	In-State Presence and Statewide Coverage	7
11.	Tariffs	7
12.	Resp Org	8
13.	RFQ Mandatory Requirements	8
14.	Toll-Free Number Service Requirements	8
15.	Toll-free Service Availability/Reliability and Credits	10
16.	Service Installation	10
17.	Purchaser Support	10
18.	Transition Planning	11
19.	Site Security	11
20.	Contractor Commitments, Warranties and Representations	11
21.	Protection of Purchaser's Confidential Information	11

Purchaser's Authority and Responsibilities

22.	Purchaser Use of Master Contract	12
23.	Export Restrictions	12

Software License

24.	License Grant	12
25.	Software Ownership	13
26.	Date Warranty	13
27.	Physical Media Warranty	13
28.	No Surreptitious Code Warranty	14
29.	Software Upgrades and Enhancements	14
30.	Software Maintenance and Support Services	14
31.	Software Documentation	15

Table of Contents, cont'd

Contract Administration

32.	Legal Notices	15
33.	Contractor Account Manager	16
34.	Section Headings, Incorporated Documents and Order of Precedence.....	16
35.	Entire Agreement	17
36.	Authority for Modifications and Amendments	17
37.	Additional Services	17
38.	Independent Status of Contractor	17
39.	Governing Law.....	17
40.	Rule of Construction as to Ambiguities	18
41.	Subcontractors.....	18
42.	Assignment.....	18
43.	Publicity	18
44.	Review of Contractor's Records	19

General Provisions

45.	Patent and Copyright Indemnification	19
46.	Save Harmless	20
47.	Industrial Insurance Coverage.....	20
48.	Licensing Standards	20
49.	Compliance with Civil Rights Laws	21
50.	Severability	21
51.	Waiver.....	21
52.	Treatment of Assets.....	21
53.	Contractor's Proprietary Information.....	22

Disputes and Remedies

54.	Disputes.....	22
55.	Attorneys' Fees and Costs.....	23
56.	Non-Exclusive Remedies	23
57.	Failure to Perform	23
58.	Limitation of Liability.....	23

Contract Termination

59.	Termination for Default	24
60.	Termination for Convenience	25
61.	Termination for Withdrawal of Authority.....	25
62.	Termination for Non-Allocation of Funds	25
63.	Termination for Conflict of Interest.....	25
64.	Termination Procedure.....	25
65.	Covenant Against Contingent Fees	26

Table of Contents, cont'd

Activity Reporting and Administration Fee

66.	DIS Master Contract Administration Fee and Collection	26
67.	Activity Reporting.....	26
68.	Failure to Remit Reports/Fees.....	27

Contract Execution

69.	Authority to Bind	27
70.	Counterparts	27
71.	Facsimile Execution	28

Schedules

Schedule A:	<i>Authorized Services Price List</i>
Schedule B:	<i>Escalation Procedures</i>

Exhibits

Exhibit A:	DIS Request for Quotations T03-RFQ-014 for Toll-Free Calling and Support Services
Exhibit B:	Contractor's Response

Note: ***Exhibits A and B are not attached but are available upon request from the DIS Contract Administrator***

MASTER CONTRACT NUMBER T04-MST-001

for

Toll-Free Calling and Support Services

PARTIES

This Master Contract ("Contract" or "Master Contract") is entered into by and between the state of Washington acting through the **Department of Information Services**, an agency of Washington State government (hereinafter "DIS"), and X5 LLC, licensed to conduct business in the state of Washington, (hereinafter "Contractor") for the provisioning of Toll-Free Calling and Support Services ("Services") to the State.

RECITALS

The state of Washington, acting by and through DIS, issued a Request for Quotation (RFQ) dated June 30, 2003 (Exhibit A) for the purpose of establishing Master Contracts for Toll-Free Calling and Support Services in accordance with its authority under chapter 43.105 RCW.

X5 LLC submitted a timely Response to DIS' RFQ (Exhibit B).

DIS evaluated all properly submitted Responses to the above-referenced RFQ and has identified X5 LLC as an apparently successful Vendor.

DIS has determined that entering into a Master Contract with X5 LLC will meet the State's needs and will be in the State's best interest.

NOW THEREFORE, DIS awards to X5 LLC this Master Contract, the terms and conditions of which shall govern Contractor's furnishing to Purchasers the Toll-Free Calling and Support Services. This Master Contract is not for personal use.

This Master Contract is a non-exclusive, optional-use contract that neither financially binds the State nor otherwise obligates the State to purchase any Services hereunder. Nor does the Master Contract prevent the State from purchasing the same or similar Services from other sources, *provided that*, all legal acquisition requirements are satisfied.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1. Definition of Terms

The following terms as used throughout this Contract shall have the meanings set forth below.

"Business Days and Hours" shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“Confidential Information” shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, call detail records, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, Purchaser source code or object code, or Purchaser or State security information.

“Contractor” shall mean X5 LLC, its employees and agents. Contractor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Contract. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this Contract.

“Contractor Account Manager” shall mean a representative of Contractor who is assigned as the primary contact person with whom the DIS Contract Administrator shall work throughout the duration of this Contract, unless replaced, with advance approval of the DIS Contract Administrator, and as further defined in the section titled **Contractor Account Manager**.

“DIS” shall mean the Washington State Department of Information Services.

“DIS Contract Administrator” shall mean the TSD Contract Administrator, designated by DIS as responsible for the maintenance and administration of this Master Contract, notices, reports and any other pertinent documentation or information. The DIS Contract Administrator may also conduct periodic performance or financial audits related to this Master Contract.

“Effective Date” shall mean the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.

“Exhibit A” shall mean the RFQ.

“Exhibit B” shall mean Contractor’s Response.

“Help Desk” shall mean a service provided by Contractor for the support of Contractor’s Services. Purchaser shall report warranty or maintenance problems to Contractor’s Help Desk for initial trouble-shooting and possible resolution of the problems or for the initiation of repair or replacement services.

“Master Contract” or **“Contract”** shall mean this document, all schedules and exhibits, all amendments hereto and all Orders hereunder.

“Order” or **“Order Document”** shall mean any official document and attachments thereto specifying the Services to be purchased from Contractor under this Contract.

“Price” shall mean charges, costs, rates, and/or fees charged for the Services under this Contract and shall be paid in United States dollars.

“Proprietary Information” shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

“Purchaser” shall mean DIS and those government or nonprofit entities that have entered into an Interlocal or Customer Service Agreement with DIS.

“RCW” shall mean the Revised Code of Washington.

“RFQ” shall mean the Request for Quotation used as a solicitation document to establish this Contract, including all its amendments and modifications, Exhibit A hereto.

“Response” shall mean Contractor’s Response to the RFQ for Toll-Free Calling and Support Services, Exhibit B hereto.

“Schedule A: *Authorized Services Price List*” shall mean the attachment to this Contract that identifies the authorized Services and Prices available under this Contract.

“Schedule B: *Escalation Procedures*” shall mean the attachment to this Contract that identifies Contractor’s escalation procedures.

“Services” shall mean toll-free number services, support service, maintenance and product development purchased pursuant to this Master Contract.

“Software” shall mean the object code version of computer programs licensed pursuant to this Contract. Software also means the source code version, where provided by Contractor. Embedded code, firmware, internal code, microcode, and any other term referring to software residing in the Equipment that is necessary for the proper operation of the Equipment is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections.

“Specifications” shall mean the technical and other specifications set forth in the RFQ, Exhibit A, any additional specifications set forth in Contractor’s Response, Exhibit B, and the specifications set forth in Contractor’s Services documentation, whether or not Contractor produces such documentation before or after this Contract’s Effective Date.

“State” shall mean the state of Washington.

“Subcontractor” shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this Contract under a separate contract with Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

“TSD” shall mean the Telecommunication Services Division of DIS

Contract Term

2. Term

- 2.1. This Master Contract’s initial term shall be two (2) years, commencing upon the Effective Date.
- 2.2. This Master Contract’s term may be extended by four (4) additional one (1) year terms, provided that the extensions shall be at DIS’ option and shall be effected by DIS giving written notice of its intent to extend this Contract to Contractor not less than thirty (30) calendar days prior to the Contract term’s expiration and Contractor accepting such extension prior to the Contract term’s expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.
- 2.3. Upon termination or expiration of this Master Contract, a transition period will be allowed so that Purchasers may transition to a new Master Contract holder. Such transition period may extend for up to ninety (90) days. During the transition period, Purchasers may continue to pay Contractor at the rates in Schedule A for Services

received from Contractor. In the event Contractor is competitively awarded the new Master Contract, there shall be no transition period and Purchasers shall pay the rates established under the new Master Contract as of the new Master Contract's effective date.

3. Survivorship

All purchase transactions executed pursuant to the authority of this Master Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Contractor; Contractor Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Contractor's Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability**, shall survive the termination of this Master Contract.

Pricing, Invoice and Payment

4. Pricing

- 4.1. Contractor agrees to provide the Services to Purchasers at the prices set forth in the *Authorized Services Price List* attached as Schedule A to this Master Contract. Such prices may not be increased during the term of this Master Contract. No other costs shall be payable to Contractor.
- 4.2. Contractor agrees to participate in the Federal Communication Commission's E-rate discount program established pursuant to the Telecommunications Act of 1996, in accordance with the Schools and Libraries Division (SLD) of the Universal Service Administration Corporation (USAC) requirements.
- 4.3. If Contractor reduces its prices for any of the Services during the term of this Master Contract, Purchaser shall have the immediate benefit of such lower prices for new purchases. Contractor will send notice to the DIS Contract Administrator with the reduced prices within fifteen (15) calendar days of the reduction taking effect.

5. Advance Payment Prohibited

No advance payment shall be made for the Services furnished by Contractor pursuant to this Contract.

6. Taxes

- 6.1. Purchaser will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. Purchaser, as an agency of Washington State government, is exempt from property tax.
- 6.2. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

- 6.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

7. Invoice and Payment

- 7.1. Contractor will submit properly itemized invoices to the person identified by Purchaser at the address provided by Purchaser.
- 7.2. Invoices shall be submitted to Purchasers no later than the end of the following month, for the previous month's activities.
- 7.3. Invoices, with call detail records, shall be available on paper, and via electronic delivery. Electronic delivery may be effected via a secure encrypted Internet website, or by electronic media (e.g., CD or DVD). Data delivered via electronic delivery shall be provided in a format (e.g., tab delimited) which can be imported into generally available database or spreadsheet programs for subsequent manipulation, either via proprietary software package or common software (e.g., ACCESS). The intent of this requirement is to provide Purchaser the capability to do custom reports(see Section 8 below).
- 7.4. Invoices shall show Contract Prices on a per minute or per unit basis rather than as a discount off of a tariff or price list.
- 7.5. Contractor shall bill in six-second increments or less. For example, a call lasting one minute and five seconds, shall be billed for a maximum of one minute and six seconds of usage.
- 7.6. Contractor will not bill for busy signals or for calls abandoned prior to receiving an answer.
- 7.7. Invoices shall provide and itemize, as applicable:
- a) Contractor name, address, phone number, and Federal Tax Identification Number;
 - b) Purchaser's name and address, and Purchase Order or Field Order number;
 - c) This Master Contract number T04-MST-001;
 - d) The toll-free telephone number(s);
 - e) Call detail records displayed by toll-free number, including at a minimum:
 - Call date
 - Call origination time
 - Origination location information (NPA, NXX, and Station)
 - Toll-free Number dialed
 - Call duration in minutes and seconds
 - Contractor usage charge
 - Intrastate/interstate/international indicator
 - ANI (if provided to the Contractor).
 - Payphone identifier, on a per call basis
 - f) Description of Services, including price for each;
 - g) Total purchase Price;
 - h) Applicable taxes;
 - i) DIS Master Contract Administration Fee (0.5% or 0.005 of the total purchase Price);

- j) Total invoice amount; and
 - k) Payment terms including any available prompt payment discounts.
- 7.8. Invoices shall allow for the following account coding structure:
- a) Number (5 alpha/numeric digits) and sub-agency number (4 alpha/numeric digits; however only 1 is used currently). Format = 99999-XXXX
 - b) Account identification (4 alpha/numeric digits) and sub-account number (2 alpha/numeric digits). Format = 9999-XX
- NOTE: Purchasers use various combination(s) of the above coding structure. For example, some use agency number without a sub-agency; there will be multiple billing addresses for one agency; some use only a one-digit sub-agency number rather than three-digits; some do not use an account number. Contractor must allow flexibility in invoice account coding to meet unique Purchaser needs. Contractor will be required to work with individual Purchasers to establish billing criteria whereby the number of minutes and the number of calls are a requirement. Electronic billing management software must be made available to Purchasers.
- 7.9. Payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.10. Incorrect or incomplete invoices will be returned by Purchaser to Contractor for correction and reissue.
- 7.11. The DIS Contract number T04-MST-001 must appear on all bills of lading, packages, and correspondence relating to this Contract.
- 7.12. If Purchaser fails to make timely payment, Contractor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Equipment or receipt of Contractor's properly prepared invoice, whichever is later.

8. Services Management Reporting

- 8.1. When requested, Contractor shall provide Purchasers with management level reporting on their toll-free usage to include at a minimum call detail, peak and overall traffic volume, calls blocked, and distribution of calls by area code or location. Contractor shall provide information on the most frequent callers and the longest calls associated with a toll-free number. Contractor shall also provide a line item disclosure stating precisely the rates for any surcharges, such as Universal Service recovery charges and originating calls from pay phones.
- 8.2. Contractor shall provide electronic billing management software to all Purchasers.
- 8.3. At Purchaser's request, Contractor must be able to supply a summary level report of the information identified in Section 8.1 above.
- 8.4. Upon request, Contractor shall provide DIS with management level statistical reporting on overall Master Contract usage.

9. Overpayments to Contractor

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

Contractor's Responsibilities

10. In-State Presence and Statewide Coverage

Contractor shall have a place of business staffed by Contractor-employees within Washington State and shall maintain such place of business for the duration of the Master Contract. All Purchaser Orders and communications and all sales and Services provided to Purchasers will be through this in-state location. Contractor's Services shall be available under this Master Contract to Purchasers located throughout the state of Washington.

11. Tariffs

- 11.1. Contractor agrees to make all State or Federal tariff filings that are required by law or regulation and that are necessary for contract performance. Contractor shall provide State with copies of all such tariffs on the same day they are filed. Contractor shall certify that all terms, conditions, and prices in the tariff are as stated in this Master Contract, and that the tariff contains nothing inconsistent with the Master Contract.
- 11.2. If necessary, Contractor shall make any initial filing required to implement the Contract within ten (10) calendar days after the Effective Date of this Master Contract. If such initial filing is not permitted to become effective by the appropriate regulatory body within thirty (30) calendar days after the date of contract award, the State shall have the right to terminate the contract partially or entirely without liability.
- 11.3. Before this Master Contract becomes effective, Contractor shall provide to DIS copies of its current tariffs which pertain to the provision of the Services described herein.
- 11.4. After this Master Contract becomes effective, except for any filing pursuant to Section 11.1 above, Contractor agrees to provide advance copies of all revisions to tariffs or new tariffs that specifically pertain to the Contract or that may materially affect Purchaser's rights or obligations under the Contract. These shall be provided to DIS at least ten (10) calendar days in advance of the intended filing date. Contractor shall make no revisions to its tariffs that materially and adversely affect the State's rights under this Contract. If any ruling, order or determination of any regulatory agency or court of competent jurisdiction shall materially and adversely affect the Contractor's ability to offer services under the terms and conditions of this Master Contract, Contractor agrees to immediately develop a proposal that provides comparable service to the State at rates equal to or less than those set forth in the Contract, and under terms and conditions identical to those set forth in the Contract, to the extent permissible under applicable legal and regulatory requirements. Such service may be provided under other existing tariffs (if this can be done at such tariffs' then effective rates without further revision) or under newly filed tariffs. If Contractor is unwilling or unable to develop such a proposal within ten (10) days of any such event, the State will have the right to terminate the Contract partially or entirely without liability.

12. Resp Org

Contractor agrees to serve as responsible organization ("Resp Org") for managing SMS records associated with toll-free numbers utilized by Purchasers. Contractor further agrees that it will not transfer Resp Org responsibility for these SMS records to another entity without the consent of Purchasers.

13. RFQ Mandatory Requirements

The RFQ mandatory requirements are essential substantive terms of this Master Contract. Services provided under this Master Contract shall meet or exceed all the mandatory requirements of the RFQ.

14. Toll-Free Number Service Requirements

Contractor's toll-free number Services shall:

- 14.1. Provide, at all times, voice transmission quality measured at the Purchaser interface which is at or better than toll quality as defined within the ITU-T P.800 specification with an MOS not below 4.0 or the ITU-T P.861 specification utilizing a PSQM value not in excess of 0.5.
- 14.2. Provide a P.01 or better grade of service to all locations on the Contractor's network.
- 14.3. Provide call setup within 8 seconds. This is defined from the moment the Contractor receives the last digit of the dialed number to the point ringing is heard.
- 14.4. Be supported by switching sites and wire centers that are capable of continuous operation during a commercial power outage.
- 14.5. Be supported by facilities within Contractor's network to provide diverse routing between Contractor's switching sites in the event of a network failure
- 14.6. Provide toll-free number access to callers from Canada, Alaska and Hawaii without requiring a number change.
- 14.7. Support SS7 signaling interconnection to the local exchange carriers, and utilize SS7 signaling within the proposed network for the routing of toll-free calls.
- 14.8. Provide the capability to have calls to the same toll-free number handled by multiple long distance carriers, or routed to different locations on the basis of a predetermined percentage (e.g., 90 percent carrier #1, 10 percent carrier #2, etc.).
- 14.9. Provide the capability to have calls to the same toll-free number handled by multiple long distance carriers, or routed to different locations on the basis of geography (e.g., Eastern US carrier #1, Western US carrier #2, etc.).
- 14.10. Provide the capability to have calls to the same toll-free number handled by multiple long distance carriers, or routed to different locations according to time of day (e.g., 8 a.m. to 5 p.m. carrier #1, other hours carrier #2, etc.).
- 14.11. Provide the capability to have calls to the same toll-free number handled by multiple long distance carriers, or routed to different locations according to the day of the week.
- 14.12. Provide the capability to have calls to the same toll-free number routed to different call centers intelligently, on the basis of network congestion.

- 14.13. Provide the capability to have calls to the same toll-free number routed to different call centers intelligently, based on the originating location of a call (e.g., region, area code, or prefix).
- 14.14. Provide the capability of carrier supplied automated routing, which allows callers to route their own calls, using the touch-tone pad of the telephone (e.g., entering account numbers, or department choice).
- 14.15. Provide the ability to control the routing pattern of a toll-free number within thirty (30) minutes of Purchaser's emergency request.
- 14.16. Provide the ability to support Dialed Number Identification Service (DNIS).
- 14.17. Provide the ability to reroute traffic, in the event of service interruptions, within thirty (30) minutes of a Purchaser request, to another number or a Contractor-provided recording.
- 14.18. Provide the ability to provide toll-free service across ISDN Primary Rate Interface (PRI) Service to allow the receiving switch to route callers according to captured Automatic Number Identification (ANI).
- 14.19. Provide the ability to block toll-free access to callers within the local calling area of the toll-free Purchaser's telephone system. Contractors shall make available to Purchasers custom local number referrals for callers that are blocked on specific numbers in a given local area.
- 14.20. Provide the capability to block toll-free access to callers based on ANI, area code, originating calls from pay phones, and geographic location. This blocking capability could be required on a permanent basis, or in response to traffic spikes and toll fraud. In the case of toll fraud, the blocking shall be activated within twenty-four (24) hours of notification by the Purchaser.
- 14.21. In the event that a T-1 carrying services is unavailable, provide the ability to automatically re-route toll-free calls to a switched number for each toll-free number supported by that T-1. This routing shall support the ability to switch multiple toll-free numbers on a single T-1 to multiple switched Public Switched Telephone Network numbers.

In addition, Contractor shall:

- 14.22. Allow co-location or virtual co-location of Customer Provided Equipment (CPE) in situations where calls can be handled without being transported to Purchaser premises. In these situations, 24-hour access (with prior arrangements) shall be made for Contractors of the CPE equipment to make repairs and provide maintenance to the CPE. If escorted entry is required, Contractor shall be able to provide escort within two (2) hours of a request.
- 14.23. Make available on Purchaser request the Disaster Recovery plans for catastrophic outages, such as power interruptions and circuit cuts.
- 14.24. Provide toll-free Services to any location where a Purchaser may be located within the state of Washington.

15. Toll-free Service Availability/Reliability and Credits

15.1. Service Availability

Toll-free Service shall be available 24 hours per day, every day of the year.

15.2. Service Performance

Toll-free Service shall perform 99.90 percent of the time during a calendar month.

15.3. Date Warranty

Contractor warrants that all Services and Software provided under this Master Contract: (i) do not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may interact with date records of the Services and Software.

15.4. Out of Service Definition

The inability of Contractor to deliver a toll-free call to its predetermined destination due to carrier-related network problems shall be considered "Out of Service." This definition shall not cover problems due solely to Purchaser's network or equipment.

15.5. Extended Out of Service Conditions

The existence of an Out of Service condition for 24 continuous hours (or more) shall allow the Purchaser, at its option, to terminate the affected toll-free number Service without termination liability or receive an Out of Service credit in an amount equal to the monthly recurring charge for the affected toll-free number for the month in which the outage occurred.

16. Service Installation

16.1. Contractor agrees to provide fully operational Service within forty-five (45) days of Purchaser's Order. If a lack of facilities means that Contractor cannot meet the installation date, Contractor must notify Purchaser in writing of such circumstances within fifteen (15) days of Purchaser's Order, to set a new installation date schedule.

16.2. For switched services, Contractor Contractor agrees to provide Switched Service within five (5) Business Days of Purchaser's Order.

17. Purchaser Support

Contractors shall provide support Services defined below.

17.1. Account Representatives

Contractor shall dedicate a minimum of two (2) full time in-state Account Representatives (or one representative and one assistant) who will promote, market, and demonstrate the service to potential new Purchasers and existing Purchaser organizations and provide Order assistance.

17.2. Help Desk Services

Contractor shall provide Help Desk Services for general Purchaser assistance and information and for reporting Service issues and for troubleshooting problems. In addition, Contractor shall provide Purchasers with an Escalation List with individuals of increasing levels of responsibility to resolve issues not addressed to the Purchaser's

satisfaction. Contractor's Help Desk Services shall be web-based and accessible via e-mail or via one or more a 24-hour toll-free telephone lines.

17.3. Contractor Support Functions

Contractor shall provide: (i) database administration; (ii) single point of contact for problem resolution; and (iii) single point of contact for Service Orders.

17.4. Adds/Moves/Changes

Contractor shall respond to Purchaser's request for adds, moves or changes within five (5) Business Days of the request.

18. Transition Planning

Contractors shall participate and cooperate fully in planning for and accomplishing Purchaser's transition, either on to, or off of the Services provided pursuant to this Contract. At Purchaser's request, Contractor shall prepare a transition plan for initiation or termination of Services. This will include, but is not limited to, schedule, number portability, cutover.

19. Site Security

While on Purchaser's premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

20. Contractor Commitments, Warranties and Representations

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

21. Protection of Purchaser's Confidential Information

21.1. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information, the disclosure of which to, or use by, third parties could be damaging. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement

physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

- 21.2. Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser's Confidential Information.
- 21.3. Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 21.4. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Purchaser's Authority and Responsibilities

22. Purchaser Use of Master Contract

- 22.1. This Master Contract may be used only by Purchasers who have a Customer Service Agreement with DIS and is not for personal use. Reference of this Master Contract Number and/or Purchaser's signature on the order document signifies agreement to comply with these requirements. Failure to abide by these requirements may result in the Purchaser forfeiting the right to make future purchases under this or other Master Contracts.
- 22.2. Purchaser shall comply with the terms and conditions of this Master Contract, including but not limited to, **Export Restrictions**, all Software license terms, and the notice requirements set forth in the provision titled **Contractor's Proprietary Information**. Reference of this Master Contract Number and/or Purchaser's signature on the order document signifies agreement to comply with Contractor's software license terms, export restrictions and protection of Contractor's confidential or proprietary information.

23. Export Restrictions

Purchaser shall not transport or transmit, directly or indirectly, the Software or any technical data received from Contractor, nor the direct product derived there from, outside the United States or Canada without Contractor's prior written consent and without complying with all export laws and regulations of the United States.

Software License

24. License Grant

- 24.1. Contractor grants to Purchaser a non-exclusive, fully-paid-up, perpetual, site-wide, irrevocable license to use the billing management Software and related documentation according to the terms and conditions of this Contract.
- 24.2. Purchaser will not decompile or disassemble any Software provided under this Contract or modify Software that bears a copyright notice of any third party without the prior written consent of Contractor or Software owner.

24.3. Purchaser will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. Purchaser may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents. Purchaser may use backup or archival copies of the Software, without reinstallation or interruption of production copy(ies), for disaster recovery exercises at its disaster recovery site(s), without additional charge. Purchaser may make these backup or archival copies available to the disaster recovery site employees who require use of the Software in order to assist Purchaser with disaster recovery exercises. Purchaser agrees that production use of the Software at the disaster recovery site(s) shall be limited to times when Purchaser's facilities, or any portion thereof, are inoperable due to emergency situations.

25. Software Ownership

Contractor shall maintain all title, copyright, and other proprietary rights in the Software. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract. Contractor hereby warrants and represents to Purchaser that Contractor is the owner of the Software licensed hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Software provided by Contractor through this Contract without violating any rights of any third party worldwide. Contractor represents and warrants that Contractor has the right to license the Software to Purchaser as provided in this Contract; and that Purchaser's use of the Software and documentation within the terms of this Contract will not infringe upon any copyright, patent trademark or other intellectual property right worldwide or violate any third party's trade secret, contract or confidentiality rights worldwide. Contractor represents and warrants that: (i) Contractor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party, and (ii) that Contractor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

26. Date Warranty

Contractor warrants that all Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event of a breach of any of these representations and warranties, Contractor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

27. Physical Media Warranty

27.1. Contractor warrants to Purchaser that each licensed copy of the Software provided by Contractor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty"). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar days after the date of Acceptance of the Software copy by Purchaser.

- 27.2. Contractor shall replace, at Contractor's expense including shipping and handling costs, any Software copy provided by Contractor that does not comply with this warranty.

28. No Surreptitious Code Warranty

- 28.1. Contractor warrants to Purchaser that no licensed copy of the Software provided to Purchaser contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. Contractor further warrants Contractor will not introduce, via modem or otherwise, any code or mechanism that electronically notifies Contractor of any fact or event, or any key, node, lock, time-out or other function, implemented by any type of means or under any circumstances, which may restrict Purchaser's use of or access to any program, data or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the Software provided to Purchaser under this Contract. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."
- 28.2. As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support.
- 28.3. As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or Equipment components designed to permit unauthorized access to disable, erase, or otherwise harm software, Equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.
- 28.4. Contractor will defend Purchaser against any claim, and indemnify Purchaser against any loss or expense arising out of any breach of the No Surreptitious Code Warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

29. Software Upgrades and Enhancements

Contractor shall, as part of maintenance purchased pursuant to this contract:

- 29.1. Supply at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware;
- 29.2. Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Software supplied to Purchaser; and
- 29.3. Supply at no additional cost interface modules that are developed by Contractor for interfacing the Software to other Software products.

30. Software Maintenance and Support Services

Contractor shall provide a replacement copy or correction service at no additional cost to Purchaser for any error, malfunction, or defect in Software that, when used as delivered, fails to perform in accordance with the Specifications and that Purchaser shall bring to Contractor's

attention. Contractor shall undertake correction service and shall use its best efforts to make corrections in a manner that is mutually beneficial. Contractor shall disclose all known defects and their detours or workarounds to Purchaser.

31. Software Documentation

Contractor shall provide two (2) complete sets of documentation for each Software Order, including technical, maintenance, and installation information. Contractor shall also provide two (2) complete sets of documentation for each updated version of Software Contractor provides pursuant to the **Software Upgrades and Enhancements** section. Contractor shall provide the documentation on or before the date Contractor delivers its respective Software. There shall be no additional charge for this documentation or the updates, in whatever form provided. Contractor's Software documentation shall be comprehensive, well structured, and indexed for easy reference. If Contractor maintains its technical, maintenance and installation documentation on a web site, Contractor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information. Contractor may also provide such information on CD-ROM. Contractor grants Purchaser the right to make derivative works, update, modify, copy or otherwise reproduce the documentation furnished pursuant to this section at no additional charge.

Contract Administration

32. Legal Notices

32.1. Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment or Software) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, or via facsimile, to the parties at the addresses and fax numbers provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Contractor at:

X5 LLC

Attn: Shawn Kearney

1520 4th Avenue Suite 500

Seattle, WA 98101

Phone: 206-973-5818

Cellular: 206-755-4040

Fax: 206-973-5899

E-mail: shawn@x5solutions.com

To DIS at:

State of Washington

Department of Information Services

Attn: TSD Contract Administrator

Mailing Address:

PO Box 42445

Olympia, WA 98504

Phone: 360-725-4200

Fax: 360-664-0711

E-mail: mcadmin@dis.wa.gov

Street Address:

2411 Chandler Court SW

Olympia, WA 98502

or to **Purchasers** at the address and fax number listed on their purchase order.

- 32.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 32.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and Purchaser further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

33. Contractor Account Manager

Contractor shall appoint an Account Manager for the State's account under this Contract who will provide oversight of Contractor activities conducted hereunder. Contractor's Account Manager will be the principal point of contact for DIS concerning Contractor's performance under this Contract. Contractor shall notify the DIS Contract Administrator, in writing, when there is a new Contractor Account Manager assigned to this Contract. The Contractor Account Manager information is:

Contractor Account Manager:

Attn: Shawn Kearney

1520 4th Avenue Suite 500

Seattle, WA 98101

Phone: 206-973-5818

Cellular: 206-755-4040

Fax: 206-973-5899

E-mail: shawn@x5solutions.com

34. Section Headings, Incorporated Documents and Order of Precedence

- 34.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 34.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.
- a) Schedules A, and B;
 - b) DIS' RFQ (Exhibit A);
 - c) Contractor's Response to DIS' RFQ (Exhibit B);
 - d) The terms and conditions contained on Purchaser's Order Documents, if used; and
 - e) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to effect the sale of Equipment to Purchaser.
- 34.3. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
- a) Applicable federal and state statutes, laws, and regulations;

- b) Sections of this Contract;
- c) Schedules A, and B;
- d) DIS' RFQ (Exhibit A);
- e) Contractor's Response to DIS' RFQ (Exhibit B);
- f) The terms and conditions contained on Purchaser's Order Documents, if used; and
- g) All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to effect the sale of Equipment to Purchaser.

35. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

36. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by DIS and Contractor

37. Additional Services

Contractor may submit new Services with associated discounts or prices to the DIS Contract Administrator. New or changed Services submitted by Contractor shall meet all mandatory requirements of the RFQ. Additional Services that are determined by DIS to be appropriate to the scope of this Master Contract, may be added to Schedule A of this Master Contract by an instrument in writing, signed by both Contractor and DIS. Such writing shall include a specific description of the additional Services, pricing, and additional terms and conditions as relevant.

38. Independent Status of Contractor

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, or Title 51 RCW.

39. Governing Law

This Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Contract or any license

granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County or the county in which Purchaser is located within the state of Washington.

40. Rule of Construction as to Ambiguities

Each party to this Master Contract acknowledges that such party has reviewed this Agreement and participated in its drafting and agrees that no provision of this Master Contract shall be construed against or interpreted to the disadvantage of a party by reason of such party having or being deemed to have drafted, structured or dictated such provision or provisions.

41. Subcontractors

Contractor may, with prior written permission from DIS Contracting Officer, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to Purchaser for any breach in the performance of Contractor's duties. For purposes of this Contract, Contractor agrees that all Subcontractors shall be held to be agents of Contractor. Contractor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employees, or violations of the **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, and Software Ownership** sections of this Contract occasioned by the acts or omissions of Contractor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Software Ownership, Publicity and Review of Contractor's Records** sections of this Contract shall apply to all Subcontractors.

42. Assignment

- 42.1. With the prior written consent of DIS Contracting Officer, which consent shall not be unreasonably withheld, Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Purchaser that may arise from any breach of the sections of this Contract, or warranties made herein including but not limited to, rights of setoff.
- 42.2. DIS may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve Purchaser of any of its duties and obligations hereunder.

43. Publicity

- 43.1. The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's services by DIS or Purchaser and shall not be so construed by Contractor in any advertising or other publicity materials.
- 43.2. Contractor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this Contract or any Services furnished by Contractor wherein DIS' or Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchaser's name with Contractor's Services may, in DIS' or

Purchaser's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS or Purchaser *prior* to such use.

44. Review of Contractor's Records

- 44.1. Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Contractor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.
- 44.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the DIS Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, Contractor shall provide access to these items within Thurston County or the county where Purchaser is located. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.
- 44.3. Contractor shall incorporate in its subcontracts this section's records retention and review requirements.
- 44.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

General Provisions

45. Patent and Copyright Indemnification

- 45.1. Contractor, at its expense, shall defend, indemnify, and save DIS and Purchaser harmless from and against any claims against DIS or Purchaser that any Software supplied hereunder, or Purchaser's use of the Software within the terms of this Contract, infringes any patent, copyright, trade secret, trademark, or other similar proprietary right of a third party worldwide. Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by DIS or Purchaser provided that DIS or Purchaser:
 - a) Promptly notifies Contractor in writing of the claim, but DIS' or Purchaser's failure to provide timely notice shall only relieve Contractor from its indemnification

obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Contractor; and

- b) Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations.

45.2. If such claim has occurred, or in Contractor's opinion is likely to occur, DIS and Purchaser agree to permit Contractor, at its option and expense, either to procure the right to continue using the Software or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Software is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Software and Purchaser, at Purchaser's sole option, may terminate its Order and/or DIS, at its sole option, may terminate this Master Contract.

45.3. Contractor has no liability for any claim of infringement arising solely from:

- a) Contractor's compliance with any designs, specifications or instructions of Purchaser;
- b) Modification of the Software by Purchaser or a third party without the prior knowledge and approval of Contractor;
- c) Use of the Software in a way not specified by Contractor; or,
- d) Use of the Software with equipment not supplied by Contractor;

unless the claim arose against Contractor's Software independently of any of these specified actions.

46. Save Harmless

Contractor shall defend, indemnify, and save DIS and Purchaser harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Contractor's obligation to defend, indemnify, and save DIS and Purchaser harmless shall not be eliminated or reduced by any alleged concurrent DIS or Purchaser negligence.

47. Industrial Insurance Coverage

Prior to performing work under this Contract, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. DIS or Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

48. Licensing Standards

Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

49. Compliance with Civil Rights Laws

During the performance of this Contract, Contractor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Contractor may be declared ineligible for further contracts with the State.

50. Severability

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

51. Waiver

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

52. Treatment of Assets

- 52.1. Title to all property furnished by Purchaser shall remain in Purchaser. Title to all property furnished by Contractor, for which Contractor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in Purchaser pursuant to the **Title to Equipment** section. As used in this section **Treatment of Assets**, if the "property" is Contractor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.
- 52.2. Any Purchaser property furnished to Contractor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Contract.
- 52.3. Contractor shall be responsible for any loss of or damage to property of Purchaser that results from Contractor's negligence or that results from Contractor's failure to maintain and administer that property in accordance with sound management practices.
- 52.4. Upon loss or destruction of, or damage to any Purchaser property, Contractor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 52.5. Contractor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Contract.
- 52.6. All reference to Contractor under this section shall also include Contractor's employees, agents, or Subcontractors.

53. Contractor's Proprietary Information

Contractor acknowledges that DIS and Purchaser are subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Contractor to be Proprietary Information, must be clearly identified as such by Contractor. To the extent consistent with chapter 42.17 RCW, DIS and Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, DIS or Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchaser will release the requested information on the date specified.

Disputes and Remedies

54. Disputes

- 54.1. In the event a bona fide dispute concerning a question of fact arises between Contractor and Purchaser and it cannot be resolved between the parties or by the DIS Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 54.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
 - a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
 - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
 - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 54.3. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible. Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute.
- 54.4. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.
- 54.5. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

55. Attorneys' Fees and Costs

- 55.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 55.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

56. Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

57. Failure to Perform

If Contractor fails to perform any substantial obligation under this Contract, DIS or Purchaser shall give Contractor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice Contractor still has not performed, then DIS or Purchaser may withhold all monies due and payable to Contractor, without penalty to DIS or Purchaser, until such Failure to Perform is cured or otherwise resolved.

58. Limitation of Liability

- 58.1. The parties agree that Contractor, DIS and Purchaser shall not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on a Date Warranty or No Surreptitious Code Warranty issue or patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default**, and **Review of Contractor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 58.2. Contractor, DIS and Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Contractor, DIS or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than DIS or Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, DIS, Purchaser, or their respective Subcontractors.
- 58.3. If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on

comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

- 58.4. Neither Contractor, DIS nor Purchaser shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Termination

59. Termination for Default

- 59.1. If Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its material obligations under this Contract, then the DIS Contract Administrator or Purchaser shall give Contractor written notice of such failure or violation, and the failure or violation shall be corrected by Contractor within thirty (30) calendar days or as otherwise mutually agreed. If such breach is not capable of cure within thirty (30) days, Contractor must commence cure within such thirty (30) day period and diligently pursue completion of such cure. If Contractor's failure or violation is not so corrected, this Master Contract may be terminated immediately by written notice from the DIS Contracting Officer to Contractor, or an Order may be terminated by written notice to Contractor from Purchaser.
- 59.2. In the event of termination of an Order by Purchaser or this Master Contract by DIS, Purchaser or DIS shall have the right to procure the Services that are the subject of this Contract on the open market and Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Master Contract price for the Services and the replacement costs of such Services acquired from another vendor; (ii) if applicable, all administrative costs directly related to the replacement of the Order or this Master Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other direct costs to Purchaser or DIS resulting from Contractor's breach. DIS and Purchasers shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe DIS or Purchasers for Contractor's default.
- 59.3. If either DIS or Purchaser violates any material term or condition of this Master Contract or fails to fulfill in a timely and proper manner its obligations under this Master Contract, then Contractor shall give DIS or Purchaser, as appropriate, written notice of such failure, which shall be corrected by DIS or Purchaser within thirty (30) calendar days, or as otherwise mutually agreed. If such failure to perform is not so corrected, Purchaser's Order may be terminated by written notice from Contractor to Purchaser or, if appropriate, this Master Contract may be terminated by written notice from Contractor to DIS.
- 59.4. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 59.5. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

60. Termination for Convenience

- 60.1. When, at the sole discretion of DIS, it is in the best interest of the State, the DIS Contracting Officer may terminate this Master Contract, in whole or in part, by fourteen (14) calendar days written notice to Contractor.
- 60.2. Purchaser may terminate its Order upon sixty (60) days notice to Contractor. If an Order is so terminated, Purchasers are liable only for payments required by the terms of any Order for Services received and accepted by Purchaser prior to the effective date of termination.

61. Termination for Withdrawal of Authority

In the event that DIS' or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Master Contract or any Order and prior to normal completion, DIS may terminate this Master Contract, or a Purchaser may terminate its Order(s), by seven (7) Business Days written notice to Contractor. No penalty shall accrue to DIS and Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its Order(s) in order to acquire similar Services from a third party.

62. Termination for Non-Allocation of Funds

If funds are not allocated to DIS or a Purchaser to continue this Master Contract or Order in any future period, DIS may terminate this Master Contract, or Purchaser may terminate its Order(s) by seven (7) Business Days written notice to Contractor or otherwise work with Contractor to arrive at a mutually acceptable resolution of the situation. DIS or Purchasers will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DIS or Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to DIS or Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its Order(s) in order to acquire similar Services from a third party.

63. Termination for Conflict of Interest

DIS may terminate this Master Contract, or Purchaser its Order(s), by written notice to Contractor if DIS or Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Master Contract or any Order is so terminated, DIS and Purchasers shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this Master Contract or any Order.

64. Termination Procedure

- 64.1. Upon termination of this Master Contract or any Order, DIS and Purchaser, in addition to any other rights provided in this Master Contract and applicable Order, may require Contractor to deliver to Purchaser any property specifically produced or acquired for the performance of such part of this Master Contract or Order as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.

- 64.2. Unless otherwise provided herein, Purchaser shall pay to Contractor the agreed-upon Price, if separately stated, for the Services received by Purchaser, provided that in no event shall Purchaser pay to Contractor an amount greater than Contractor would have been entitled to if this Master Contract or Order had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Master Contract. Purchaser may withhold from any amounts due Contractor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 64.3. Contractor shall pay amounts due Purchaser or DIS as the result of termination within thirty (30) calendar days of notice of the amounts due. If Contractor fails to make timely payment, Purchaser or DIS may charge interest on the amounts due at one percent (1%) per month until paid in full.

65. Covenant Against Contingent Fees

- 65.1. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Contractor.
- 65.2. In the event Contractor breaches this section, Purchaser shall have the right to either annul this Contract without liability to Purchaser, or, in Purchaser's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

Activity Reporting and Administration Fee

66. DIS Master Contract Administration Fee and Collection

- 66.1. All purchases made under this Master Contract are subject to a DIS Master Contract Administration Fee, collected by Contractor and remitted to DIS.
- 66.2. The Master Contract Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax.
- 66.3. The Master Contract Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser's invoice.
- 66.4. Contractor shall hold the Master Contract Administration Fee in trust for DIS until the Fees are remitted to the DIS Contract Administrator, along with the Master Contract Activity Report.

67. Activity Reporting

- 67.1. Contractor shall submit to the DIS Contract Administrator a monthly Activity Report of all Services purchased under this Master Contract. The report shall identify:
- a) This Master Contract number;
 - b) Each Purchaser making purchases during that month;
 - c) The total number of toll-free numbers purchased by each Purchaser;
 - d) The total number of switched minutes billed to each Purchaser;

- e) The total number of dedicated minutes billed to each Purchaser;
 - f) The total purchase price (excluding sales tax) for each Purchaser;
 - g) The DIS Master Contract Administration Fee for each Purchaser;
 - h) The sum of all switched minutes for all Purchasers;
 - i) The sum of all dedicated minutes for all Purchasers;
 - j) The sum of all purchase prices (excluding sales tax) for all Purchasers; and
 - k) The total amount of the DIS Master Contract Administration Fee.
- 67.2. The Activity Report and the DIS Master Contract Administration Fee shall be submitted by the 15th calendar day of the month following the month in which Contractor invoiced Purchaser. Contractor shall submit this report according to the layout specified by the DIS Contract Administrator.
- 67.3. This report may be corrected or modified by the DIS Contract Administrator with subsequent written notice to Contractor.
- 67.4. Monthly Activity Reports are required even if no activity occurred.
- 67.5. Upon request by DIS, Contractor shall provide, in the format requested, the contact information for all Purchasers during the term of the Master Contract.

68. Failure to Remit Reports/Fees

- 68.1. Failure of Contractor to remit the Master Contract Activity Report together with the Master Contract Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this Master Contract with Contractor.
- 68.2. Failure of any Purchaser to pay the Master Contract Administration Fee may result in a Purchaser forfeiting its right to purchase from this Master Contract. Contractor shall notify the DIS Contract Administrator when any Purchaser fails to pay the Master Contract Administration Fee.
- 68.3. The DIS Contract Administrator will notify Contractor of any Purchaser who has forfeited its right to purchase under this Master Contract. After such notification, any sale by Contractor to a forfeiting Purchaser may be considered failure to perform by Contractor.
- 68.4. If the performance issues are resolved, DIS, at its option, may reinstate a Contractor's participation or a Purchaser's right to purchase.

Contract Execution

69. Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

70. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

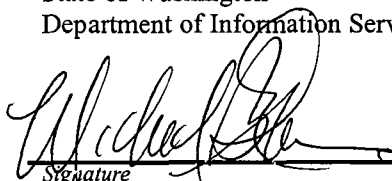
71. Facsimile Execution

The parties agree that this Contract may be executed by facsimile signature, and shall be effective as of the date of such facsimile signature. If executed by facsimile, the parties agree to provide original signature pages within ten (10) business days of facsimile execution.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Approved

State of Washington
Department of Information Services


Signature

Michael B. Emans
Print or Type Name

11/24/03
Date

Assistant Director
Title

Approved

X5 LLC


Signature

Richard Reynolds 11/19/03
Print or Type Name Date

President - CEO
Title

Approved as to Form

State of Washington
Office of the Attorney General

Signature

Chip Holcomb

Print or Type Name

Senior Counsel, AGO

Title

Date

Contractor Information

Contractor's UBI Number:
602-073-940

Minority or Woman Owned Business Enterprise

Yes _____ No X
(Certification Number)

Carlen, Bryce (DIS)

From: Holcomb, Chip (ATG)
Sent: Wednesday, December 03, 2003 3:46 PM
To: Carlen, Bryce (DIS)
Subject: RE: toll-free proposed contract

Consider it approved,
Chip Holcomb-Senior Counsel, Attorney General's Office
voice: (360)753-9671
fax: (360) 586-3593
email: chiph@atg.wa.gov

-----Original Message-----

From: Carlen, Bryce (DIS)
Sent: Tuesday, November 25, 2003 3:28 PM
To: Holcomb, Chip (ATG)
Subject: FW: toll-free proposed contract
Importance: High

Can I get your official approval as to form. The email attachment contains the contract sent to the vendor, and the other attachment contains the word document that Marie and you discussed during the time the RFQ was on the street. The vendor requested no changes so there is nothing new in there.

<< Message: RE: Toll Free - Signature Ready PDF >>

-----Original Message-----

From: Kirk, Marie (DIS)
Sent: Monday, November 24, 2003 3:50 PM
To: Carlen, Bryce (DIS)
Subject: FW: toll-free proposed contract

Here is the proposed toll-free contract with Chip's suggestions. We reviewed those via phone and they were either included in the final contract or not, as Chip and I agreed in our discussion.

-----Original Message-----

From: Holcomb, Chip (ATG)
Sent: Friday, July 18, 2003 4:41 PM
To: Kirk, Marie (DIS)
Subject: RE: toll-free proposed contract

<< File: App B Toll-Free.doc >> I have attached my suggestions, so give me a call when you have time to discuss them. I think we already discussed whether the contract should contain some description of the methodology for the purchase of the services, but I can't remember the answer. (Imagine that!)

Chip Holcomb
Senior Counsel, Attorney General's Office
P.O. Box 40108
905 Plum St., Bldg. 3
Olympia, WA 98504-0108
voice: (360)753-9671
fax: (360) 586-3593
email: chiph@atg.wa.gov

-----Original Message-----

From: Kirk, Marie (DIS)
Sent: Tuesday, July 08, 2003 12:26 PM
To: Holcomb, Chip (ATG)

Schedule A
Authorized Services Price List

as of November 2003

for
Contract Number T04-MST-001
with
X5 Solutions

Contractor is authorized to sell only the Services listed below under this Contract.

[\[See separate link for current Pricing\]](#)

Schedule B

Escalation Procedures

for
Contract Number T04-MST-001
with
X5 LLC

X5 Emergency Contact & Escalation List for State of Washington

- To open a trouble ticket during or after hours, please contact **206-839-4060** or toll free at **888-588-1501**.
- To get status on a trouble ticket, during or after hours, please also contact **206-839-4060** or toll free at **888-588-1501**.

Escalation Levels:

1st Level:

1. X5 Customer Service

Numbers:

206-839-4060 Phone
206-839-4055 Fax

2. Tinna Lee (Customer Service Mgr.)

206-839-4071 Phone
206-839-4055 Fax
206-795-2084 Cell

2nd Level:

3. Nathan Bledsoe (VP/ GM)

206-839-4059 Phone
206-839-4055 Fax
206-595-5665 Cell

3rd Level:

4. Richard Reynolds (CEO)

206-839-4070 Phone
206-839-4055 Fax
206-795-2020 Cell

X5 Switchroom:

• Steve Collins (Switch Manager)

206-839-4065 Phone
206-839-4055 Fax
206-795-2022 Cell

Amendment Number 05-01
to
Contract Number T04-MST-001
for
Toll Free Calling Services

In accordance with Section 36 (*Authority for Modifications and Amendments*) of Contract Number T04-MST-001 (the "Contract"), this Amendment 05-01 ("Amendment") is entered into by and between the State of Washington, Department of Information Services ("DIS") and X5 Solutions ("Contractor").

The purpose of this Amendment is to increase the payphone surcharge from \$.35 to \$.60 for both dedicated and switched access Toll Free Services.

Contractor and DIS hereby agree as follows:

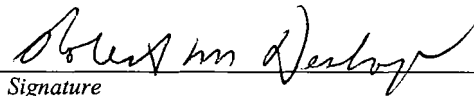
Schedule A (*Authorized Services and Price List*) is deleted in its entirety and replaced with the new Schedule A, dated February 1, 2005, attached.

This Amendment shall be effective as of February 1, 2005.

All other provisions, terms and conditions of the Contract, as previously amended, shall remain in full force and effect.

APPROVED

State of Washington
Department of Information Services


Signature

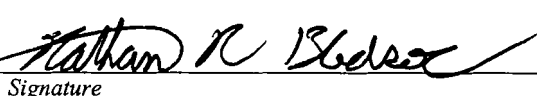
Robert M. Deshayé
Print or Type Name

Assistant Director
Title

2-1-05
Date

APPROVED

X5 Solutions


Signature

Nathan R. Bledsoe
Print or Type Name

Senior VP
Title

1/24/05
Date

Schedule A

Authorized Services and Price List

as of February 1, 2005

for

Toll Free Calling Services

Master Contract Number T04-MST-001

with

X5 Solutions

X5 Solutions is authorized to provide **only the Services identified in this Schedule A at the Prices set forth in this Schedule A** under this Contract.

[\[See separate link for current Pricing\]](#)

Amendment Number 06-02
to
Contract Number T04-MST-001
for
Toll Free Calling Services

In accordance with Section 36 (*Authority for Modifications and Amendments*) of Contract Number T04-MST-001 (the "Contract"), this Amendment 06-02 ("Amendment") is entered into by and between the State of Washington, Department of Information Services ("DIS") and X5 Solutions, Inc. ("Contractor").

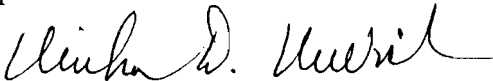
Pursuant to Section 2.2 (*Term*) the parties agree to extend the term of this Master Contract for an additional year, specifically from November 25, 2005 through November 24, 2006.

This Amendment shall be effective as of the date signed by DIS.

All other provisions, terms and conditions of the Contract, as previously amended, shall remain in full force and effect.

APPROVED

State of Washington
Department of Information Services



Signature

Michael D. McVicker

Print or Type Name

Assistant Director

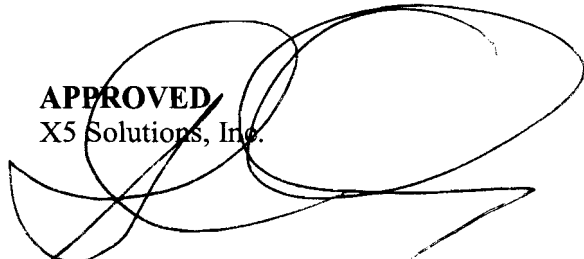
Title

11/8/05

Date

APPROVED

X5 Solutions, Inc.



Signature

Shawn Kearney

Print or Type Name

VP of Sales

Title

10/26/05

Date